

**INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY  
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009  
SECTION 1602 TAX CREDIT EXCHANGE PROGRAM  
RECAPTURE GUARANTY**

**Borrower's D-U-N-S #\_\_\_\_\_**

THIS GUARANTY (this "Guaranty") is dated as of \_\_\_\_\_, 20\_\_, by [GUARANTOR] ("Guarantor") for the benefit of **INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY**, a public body corporate and politic of the State of Indiana, as administrator of the American Recovery and Reinvestment Act of 2009 Section 1602 Tax Credit Exchange Program ("Section 1602 Program") as created and authorized by federal statute ("IHCDA").

**RECITALS:**

**WHEREAS**, IHCDA has agreed to make a loan of Section 1602 Program funds in the aggregate principal amount of \_\_\_\_\_ **and** \_\_\_/100 **Dollars (\$\_\_\_\_\_.)** (the "Loan") to \_\_\_\_\_ ("Borrower"), pursuant to that certain loan agreement dated \_\_\_\_\_, 20\_\_ and payable to the order of IHCDA (together with all renewals, modifications, increases and extensions thereof, the "Loan Agreement"), which is secured by the liens and security interests of a Mortgage dated \_\_\_\_\_, 20\_\_ (the "Mortgage") from Borrower to IHCDA encumbering the real property, improvements and personalty described therein (the "Property"), and further evidenced, secured or governed by the other Loan Documents (as defined in the Loan Agreement).

**WHEREAS**, as a condition to making the Loan, IHCDA has required the execution and delivery of this Guaranty by Guarantor.

**WHEREAS**, Guarantor [is the owner of a direct or indirect interest in the members of Borrower and, having a financial interest in the Property] [is an affiliate of the members of Borrower] [is an affiliate of Borrower], has agreed to execute and deliver this Guaranty to IHCDA.

**NOW THEREFORE**, in order to induce IHCDA to advance the Loan funds to Borrower, and in consideration of IHCDA's agreement to do so, the Guarantor hereby agrees as follows:

1. Definitions. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

2. The Guaranty. In consideration of, and as a condition precedent to, the Loan to be given, made or afforded by IHCDA to Borrower, Guarantor hereby guarantees the full and prompt payment when due and the performance by Borrower of the following (the "Liabilities") in the event of a Monetary Default by Borrower under the Loan Agreement:

(a) All amounts which may be subject to recapture in accordance with Section 1602 and the Grantee Terms and Conditions as evidenced by that certain promissory note of even date herewith, made by Borrower to IHCDA in the principal amount of \_\_\_\_\_ **and** \_\_\_/100 **Dollars (\$\_\_\_\_\_.)**; and

(b) Any and all extensions or renewals of or substitutions for any of the foregoing items, plus interest, costs, reasonable attorneys' fees, or other obligations due in connection with or on account of such items.

In the event of a Monetary Default by Borrower under the Loan Agreement, Guarantor, upon written notice from IHCD, will pay or perform the Liabilities guaranteed, in the same manner as if they constituted the direct and primary obligation of Guarantor, and such obligation of Guarantor shall be due with reasonable attorneys' fees and without relief from valuation or appraisal laws.

3. Joint and Several Obligation. The obligations of Guarantor under this Guaranty and those of any other guarantor or guarantors who may now or hereafter guarantee any indebtedness or obligations of Borrower will be joint and several, and Lender may release or settle with any one or more of such guarantors at any time without affecting the continuing liability of the Guarantor.

4. Renewals, Extensions, and Substitutes. The renewals, extensions, modifications and substitutions of and for indebtedness and the Liabilities of Borrower guaranteed hereunder may be made by IHCD upon such terms and conditions and with such modifications and changes as IHCD may see fit and made at any time from time to time without further notice to or consent from Guarantor.

5. Waivers of Guarantor. Guarantor hereby waives each of the following:

(a) Notice of acceptance of this Guaranty, of any extension of credit, advance, loan or similar accommodation by IHCD to Borrower, and of the amount of the Liabilities which may exist from time to time.

(b) Presentment, demand, protest, or notice of dishonor, nonpayment, or other default with respect to any of the Liabilities.

(c) Any requirement that IHCD marshal the security, or institute suit, or exercise or exhaust its rights or remedies against Borrower, or against any other person, guarantor, mortgage, or other Collateral guaranteeing or securing all or any part of the Liabilities (the obligations of such guarantor or other person and such mortgage or collateral being herein referred to as the "Collateral"), prior to enforcing any rights it has under this Guaranty, or otherwise against Guarantor.

(d) Any right of subrogation with respect to the Liabilities or the Collateral for a period extending through the expiration of all periods under applicable bankruptcy law for the contest of any payment by Guarantor or Borrower as a preferential or fraudulent payment, after irrevocable payment and satisfaction in full of the Liabilities.

(e) Any defenses now or hereafter arising or asserted by reason of (i) the invalidity or disability, in whole or in part, at the time of its acceptance, or at any other time, of the Collateral, (ii) the fact that any of the property, a part of the Collateral, may at any such time be in default or be incorrectly estimated, or (iii) the deterioration in market or other value, waste, loss by fire, theft, loss or substitution of any property a part of the Collateral.

The existence of any conditions hereinabove waived shall in no way affect or release the obligations of Guarantor hereunder.

6. Rights of IHCD. IHCD shall have the right, without prior notice to Guarantor, to deal in any manner with the Liabilities and the Collateral, including, but not limited to, the following rights:

(a) to modify or otherwise change the terms or alter any part of the Liabilities, including, but not limited to, changing the rate of interest thereon, to effect any release, compromise or settlement with respect thereto;

(b) to extend or renew the Liabilities, and to forbear to take steps to enforce the payment of all or any part thereof against Borrower;

(c) to forbear from calling for additional collateral, to consent to the substitution or release of all or any part of the Collateral, whether or not of the same or different character or value than the Collateral surrendered by IHCD; and

(d) to release or to forbear to proceed against all or any part of the Collateral, or to substitute any new for any existing Collateral; and

(e) following the occurrence and continuance of (i) an Event of Default under the Loan Documents or (ii) a default under this Guaranty, any payment received by IHCD from Borrower, or from any other source other than Guarantor may be applied to the Liabilities of Borrower to IHCD in whatever order IHCD elects, and any payment received from Guarantor may be applied to any obligations of Borrower to IHCD guaranteed hereunder in whatever order IHCD elects.

The obligations of Guarantor hereunder shall not be released, discharged or affected in any way, nor shall Guarantor have any recourse against IHCD by reason of any action which IHCD may take or omit to take under these powers, or otherwise existing with respect to the Liabilities or the Collateral absent a showing of the willful misconduct or gross negligence of IHCD.

7. **Enforcement Costs.** If: (a) this Guaranty, is placed in the hands of one or more attorneys for collection or is collected through any legal proceeding; (b) one or more attorneys is retained to represent IHCD in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under this Guaranty, or (c) one or more attorneys is retained to represent IHCD in any other proceedings whatsoever in connection with this Guaranty, then Guarantor shall pay to IHCD upon demand all fees, costs and expenses incurred by IHCD in connection therewith, including, without limitation, reasonable attorney's fees, court costs and filing fees in addition to all other amounts due hereunder.

8. **Bankruptcy of Borrower.** Guarantor hereby irrevocably agrees that if Borrower becomes bankrupt or otherwise the subject of any case or proceeding under the bankruptcy laws of the United States of America, then for a period extending through the expiration of all periods under applicable bankruptcy law for the contest of any payment by Guarantor or Borrower as a preferential or fraudulent payment after irrevocable payment and satisfaction in full of the Liabilities (i) Guarantor will not assert against Borrower or Borrower's estate any right or claim to indemnification, reimbursement, contribution or payment which Guarantor may have now or at any time against Borrower for or with respect to any and all amounts Guarantor may pay or be obligated to pay IHCD, including, without limitation, the Liabilities, and any and all obligations which Guarantor may perform, satisfy or discharge, under or with respect to this Guaranty and, (ii) Guarantor waives and releases all such rights and claims to indemnification, reimbursement, contribution or payment which Guarantor may have now or at any time against Borrower.

9. **Consent to Jurisdiction.** TO INDUCE IHCD TO ACCEPT THIS GUARANTY, GUARANTOR IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS GUARANTY WILL BE LITIGATED IN COURTS HAVING SITUS IN INDIANAPOLIS, INDIANA. GUARANTOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN INDIANAPOLIS, INDIANA, WAIVES PERSONAL SERVICE OF PROCESS UPON

**GUARANTOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO GUARANTOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.**

10. **Waiver of Jury Trial.** GUARANTOR AND IHCDA (BY ACCEPTANCE OF THIS GUARANTY), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS GUARANTY OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS GUARANTY, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. GUARANTOR AND IHCDA EACH AGREE THAT IT WILL NOT ASSERT ANY CLAIM AGAINST THE OTHER ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES. IHCDA AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST GUARANTOR ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

11. **General Provisions.** The rights and remedies of IHCDA under this Guaranty and any others otherwise created are cumulative and may be exercised singly or concurrently, and the exercise of any one or more of them will not be a waiver of any other. No act, delay, omission or course of dealing between IHCDA and Borrower or Guarantor, or any other person, or any of them, will be a waiver of any of IHCDA's rights or remedies under this Guaranty, and no waiver, change, modification or discharge of this Guaranty or any obligation created hereby will be effective unless in writing signed by IHCDA. The rights and obligations created by this Guaranty shall inure for the benefit of and shall be binding upon the personal representatives, successors and assigns, including, but not limited to, the holders or owners of the Liabilities, of the parties hereto.

12. **Notice.** All notices pursuant to this Guaranty shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by certified United States mail, addressed to:

Guarantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Lender: Indiana Housing and Community Development Authority  
30 S. Meridian Street, Suite 1000  
Indianapolis, IN 46204  
Attention: General Counsel

or at such other place as either party may, by notice in writing, designate as a place for service of notice.

*(Remainder of page intentionally left blank.)*

**NON-COLLUSION AND ACCEPTANCE**

The undersigned attests, subject to the penalties for perjury that he/she is Guarantor, or is the properly authorized representative, agent, member or officer of Guarantor, and that he/she has not, nor has any other member, employee, representative, agent or officer of Guarantor, as applicable, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Guaranty other than that which appears upon the face of this Guaranty.

IN WITNESS WHEREOF, Guarantor, through its duly authorized representatives, entered into this Guaranty. The parties, having read and understood the foregoing terms of this Guaranty, do by their respective signatures dated below hereby agree to the terms thereof.

“Guarantor”

\_\_\_\_\_

STATE OF INDIANA )

) SS:

COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, known to me, who being first duly sworn, acknowledged the execution of the foregoing “Guaranty.”

WITNESS my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Printed)

My Commission Expires:

\_\_\_\_\_

My County of Residence:

\_\_\_\_\_

# INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY

STATE OF INDIANA    )  
                               ) SS:  
COUNTY OF \_\_\_\_\_)

Witness my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public

Printed Name

LOAN «GI\_KEY»  
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